IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.5511 OF 2014
AND
W.M.P.NO.1 OF 2014

M.Sanchana ... Petitioner

Vs.

1. The Regional Officer,
   All India Council for Technical Education,
   Southern Regional Office,
   Shastri Bhavan, 26, Haddows Road,
   Nungambakkam, Chennai - 600 006.

2. The Principal Secretary/
   Commissioner of Technical Education,
   Department of Technical Education,
   Chennai - 600 025.

3. The Registrar,
   Anna University, Sardar Patel Road, Chennai.

4. The Principal,
   KCG College Technology,
   Rajiv Gandhi Salai, Karapakkam,
   Kancheepuram District. ... Respondents

Prayer:
Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, to direct the fourth respondent to refund a sum of Rs.1,42,400/- (One Lakh Forty Two Thousand and Four Hundred Only) paid by the petitioner towards tuition and other fees for first year with interest at the rate of 12% from 20.09.2013 to till date of realization.

For Petitioner : Mr.M.Rajasekaran
For Respondents : M/s.A.L.Gandhimathi for R1
Mr.J.James for R4
Mr.S.Karthick for R2
Mr.Vijayakumar for R3

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O R D E R

The petitioner has filed a writ petition to direct the 4th respondent to refund a sum of Rs.1,42,400 paid by the petitioner towards tuition and other fees for the 1st year together with interest at the rate of 12% from 20.9.2013 to the date of realisation.

2. It is a case of the petitioner that the petitioner joined the 4th respondent College pursuant to common entrance exam and later based on the ranking she was selected to undergo BDS course after she qualified in the common entrance exams conducted under the aegis of the 1st and the 2nd respondents. It is therefore submitted that the tuition fee paid by the petitioner to the 4th respondent was liable to be refunded as the 4th respondent cannot make unjust profit merely because the petitioner had joined the 4th respondent College earlier.

3. In support of the present writ petition, the learned counsel for the petitioner submits that under similar circumstances in the case of RAMDEO Baba Kamala Nehru Engineering College and others versus Sanjay Kumar and others (2002) 10 SCC 487, the Honourable Supreme Court upheld the contention of the scholar like the petitioner who had originally paid the tuition fee on securing admission but had to join another college after getting admission in another college.

4. Opposing the prayer for the grant of relief, learned counsel for the 4th respondent College submits that as per the guidelines of the 1st respondent and the 2nd respondents, the 4th respondent cannot admit any student after 15th of August of any of the academic year. The 4th respondent submits that under the circumstances it could not fill up the vacancy caused on account of the petitioner leaving the college.

5. It is further submitted that the policy and the guidelines issued by the 1st respondent vide letter dated 2.11.2001 bearing reference 14-4/2007-U.3 (A) issued by the Government of India Ministry of Human Resource Development of Higher Education, it has been clarified that where request for cancellation of admission is made before/after the start of the academic session where the seats could not be filled by the Institute, there is no question of refund of the fees except for the security deposit paid at the time of admission.

6. It is submitted that the petitioner joined the 4th respondent College and after attending classes for about two and

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half months, she requested for her return of the certificate to pursue BDS course during the month of September 2013.

7. It is submitted that there was an embargo on the 4th respondent to admit any student after the petitioner left as the last date for admitting student to pursue academic year had already expired on 15.8.2013. It is therefore submitted that, due to the vacancies caused on account of the petitioner leaving the college, it was unable to admit any other student to pursue course. It is therefore submitted that, the 4th respondent cannot be called upon to pay back the amount collected as a fee at the time of admission.

8. The learned counsel for the 1st respondent, 2nd and the 3rd respondents also confirm the position that the 4th respondent College could not have filled up the vacancy after the cut off date expired on 15.8.2013.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the submission of the learned counsel for the respondents. The present Writ Petition has been filed to recover the amount paid as fees by the petitioner while joining of the 4th respondent College. The petitioner wants a refund of the fees paid to the 4th respondent at the time of admission as the petitioner obtained admission to pursue BDS course.

10. Prima facie, it is a private dispute between the petitioner and the 4th respondent College. Therefore, ordinarily the jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked. The petitioner has an alternate remedy to file a suit to recover the amount. However, as per the decision of the Hon'ble Supreme Court in Shri Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanthi Mahotsavi Samark Trust Vs V.R. Rudani (1989) 2 SCC 691, the Honourable Supreme Court appears to have held that such disputes are justiciable under article 226 of the constriction of India. Therefore, the issue as to whether the writ petition is maintainable or not is answered in favour of the petitioner.

11. However, the decision of the Honourable Supreme Court in of RAMDEO Baba Kamala Nehru Engineering College and others versus Sanjay Kumar and others (2002) 10 SCC 487 cited by the learned counsel for the petitioner is not applicable to the facts of the case. Therefore, the relief sought for by the petitioner cannot be granted.

12. Though the Honourable Supreme Court has upheld the relief granted by this Court in the said case, it is to be noted that the admission was secured in the said case after the process of admission was over and, within two months from the date of the admission, the respondent therein withdrew his

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admission as he got admission elsewhere.

13. There the High Court allowed the writ petition and directed the said college to refund the amount. The appellant college was directed by the High Court. The said college merely questioned the jurisdiction of the court to entertain the writ petition under Article 226 of the Constitution of India.

14. The High Court referred to the decision of the Honourable Supreme Court in Shri Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanthi Mahotsavi Samark Trust Vs V.R. Rudani (1989) 2 SCC 691 and answered the issue in favour of the student and thus allowed the relief to the petitioner therein. Barring the above defence no other difference was raised by the college before the High Court.

15. However it has to be underlined that there the Honourable Supreme Court referred to the guidelines issued by the Government of Maharashtra as per which in the event of admission being cancelled after the process of admission was over but up to 31st October, refund of tuition fee shall be made after making deduction of 40% or 10,000 whichever is less. The applicability of the government order was not in dispute. The Honourable Supreme Court further noted that where the admission was cancelled at the behest of either side, caution money and tuition fee paid are liable to be refunded subject to permissible deductions. The refund policy of the 1st respondent reads as under:-

Situation	Refund
On request received before the date of start of the academic session and seat could be filled by the Institute before the cut off date.	Entire fees less by Rs.1000/-
On request received on/after the beginning of academic session and seat could be filled by the Institute before the cut off date.	Entire fees less the seat Cancellation charges on pro rate basis***
On request received before/after the start of the academic session and seat could not be filled by the Institute.	No Refund (except security deposit)

16. That apart, as per letter dated 02.11.2001 bearing reference 14-4/2007-U.3(A) Government of India, Ministry of

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Human Resource Development of Higher Education (U.3(A) Section it has been clarified under what circumstances, refund can be ordered.

17. The guidelines of the 1st and 2nd respondent do not enjoin the 4th respondent to refund of the fees except the caution deposit, where a request is received before/after the start of the academic session year and where seat could not be filled up due to the vacancy caused. In this case, the 4th respondent could not have filled of the vacancy after the cut off date i.e.15.8.2013. The Commissioner of Technical Education vide letter dated 29.07.2013 has also clarified that there is no question of admitting student after 15.08.2013. Therefore, the question of refund of the fees paid by the petitioner at the time of admission in the 4th respondent college cannot be ordered. Therefore, the writ petition filed by the petitioner fails except to the extent of refund of the caution deposit of Rs.5000/- paid by the petitioner.

18. Under the circumstances, the 4th respondent is directed to refund a sum of Rs.5000/- being the advance/caution deposit paid by the petitioner together with interest at 9% p.a. from 20.9.2013 to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

19. The writ petition stands disposed with the above observation. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

1. The Regional Officer,
   All India Council for Technical Education,
   Southern Regional Office,
   Shastri Bhavan, 26, Haddows Road,
   Nungambakkam, Chennai – 600 006.

2. The Principal Secretary/
   Commissioner of Technical Education,
   Department of Technical Education,
   Chennai – 600 025.

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3. The Registrar,
   Anna University, Sardar Patel Road, Chennai.

4. The Principal,
   KCG College Technology,
   Rajiv Gandhi Salai, Karapakkam,
   Kancheepuram District.

+1cc to Mr.J.James, Advocate, S.R.No.1150
+1cc to Mr.Vijayakumar, Advocate, S.R.No.1345
+1cc to M/s.A.L.Gandhimathi, Advocate, S.R.No.1581
+1cc to the Government Pleader, S.R.No.1240

W.P.No.5511 of 2014
and
W.M.P.No.1 of 2014

KV(CO)
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